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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/266,202	03/10/1999	HARIKLIA DRIS REITZ	2950.08US02	5465
24113	7590	10/02/2003	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100			LEE, KYUNG S	
			ART UNIT	PAPER NUMBER
			2832	

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/266,202

Applicant(s)

REITZ ET AL.

Examiner

Richard K. Lee

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7-9,25-30 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-9,25-30 and 36-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2 and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Miksits et al. (5,527,519).

Miksits et al. teaches powder zinc oxide particles having an average diameter of 5nm to 100nm (col. 2, lines 59-60). "Dimension" as claimed is inherent from Miksits et al.'s teachings. Further, Miksits et al. teaches the stoichiometry of zinc oxide (col. 2).

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-5, 7-9, 25-30 and 36-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Takeda et al. (6,200,680).

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Takeda et al. teaches a collection of particles in a powder comprising zinc oxide crystal (see abstract, col. 24, lines 45-55). The zinc oxide particles have an average diameter less than about 95nm (col. 5, line 33; 0.005  $\mu\text{m}$  to 0.1  $\mu\text{m}$ ). Regarding the "distribution of particle size" as claimed Takeda et al. discloses particle size variation of 30% (col. 25, line 32).

Regarding claims 2, 3 and 36, Takeda et al. discloses "about 5nm" particle diameter. Regarding claims 4, 5 and 25-26, Takeda et al. meets the particle diameter as claimed.

Regarding claims 7-9 and 37, Takeda et al. inherently discloses a zinc oxide varistor having "particle average diameter less than 95nm."

Regarding claims 27-29 and 38-40, Takeda et al. teaches the stoichiometry of zinc oxide. Further, regarding claim 30, Takeda et al. discloses a white metal oxide comprising of antimony (Hawley's page 1180; copy attached).

#### *Response to Arguments*

4. Applicant's arguments with respect to claims 1-5, 7-9 and 25-30 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

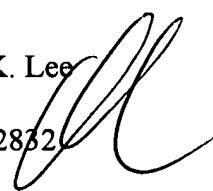
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard K. Lee whose telephone number is (703) 306-9060. The examiner can normally be reached on Mon. to Fri. 5:30AM to 2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin G. Enad can be reached on (703) 308-7619. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

Richard K. Lee  
Examiner  
Art Unit 2832

A handwritten signature in black ink, appearing to be 'R. Lee', written over the printed name and title.